

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case Nos. 05-00398-01-CR-W-FJG
MICHAEL L. FRANKLIN,)	
)	
Defendant.)	

ORDER

Defendant has filed a Request for Production of Documents without cost (Doc. No. 66). Defendant requests the production of the following documents: (1) Proposed Exhibit List (Doc. No. 32); (2) Notice of Stipulation of Fact Regarding Chain of Custody (Doc. No. 33); (3) Notice of Facts Regarding Chemist Expert Testimony (Doc. No. 34); (4) Notice of Intention to Use Prior Convictions and Bad Acts for Impeachment Purpose (Doc. No. 36); (5) Notice of Supplement Disclosure (Doc. No. 38); (6) Objection to Notice 37 (Doc. No. 39); (7) Response to Objections (Doc. No. 41); and (8) Notice and Information of Intent to Use Prior Convictions (Doc. No. 46). Defendant fails to state, however, why he is requesting these documents.

A request for court records and transcripts is premature prior to the filing of a suit or appeal. United States v. Losing, 601 F.2d 351, 352 (8th Cir. 1979); Chapman v. United States, 55 F.3d 390-91 (8th Cir. 1995). A prisoner has no absolute right to a transcript to assist him in the preparation of a collateral attack on his convictions. United States v. MacCollom, 426 U.S. 317, 322-23 (1976). “[C]onstitutional requirements are met by providing such materials only after judicial certification that they are required to decide the

issues presented by a non-frivolous pending case.” Losing, 601 F.2d at 353; see also United States v. Lewis, 605 F.2d 379, 380 (8th Cir. 1979).

A review of the docket sheet in defendant’s case reveals that defendant has not filed a Section 2255 motion. Only if defendant files a Section 2255 motion setting forth non-frivolous grounds for relief from his conviction and sentence and shows that the requested copies are needed to decide the issues presented, may he proceed under 28 U.S.C. § 2250 with his request for transcripts and other court documents. Although defendant filed an appeal of this matter on February 26, 2007, the Eighth Circuit Court of Appeals dismissed plaintiff’s appeal for lack of jurisdiction on March 12, 2007 as defendant’s appeal was untimely (Doc. No. 63). Therefore, defendant’s request for the above documents is premature.

Accordingly, it is ORDERED that defendant’s Request for Production of Documents (Doc. No. 66) is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

Date: 7/1/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge